

BEFORE THE ENVIRONMENT COURT

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal pursuant to Clause 14 of the
First Schedule to the Act

BETWEEN LAGAN HOLDINGS LIMITED
(ENV-2016-AKL-000101)

Appellant

AND THAMES-COROMANDEL DISTRICT
COUNCIL

Respondent

Environment Judge D A Kirkpatrick sitting alone under section 279 of the Act
In Chambers at Auckland

CONSENT ORDER

- [A] Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that the aspect of the appeal coded to the Rezoning topic is allowed subject to the agreed amendments to the Thames-Coromandel District Plan set out in Annexure A to this order;
- [B] Under s 285 of the Resource Management Act 1991, there is no order as to costs.



REASONS

Introduction

[1] This consent order addresses paragraph 8(a) of the appeal regarding the zoning of the appellant's land at 315 The Drive, Whangamata in the Decisions Version of Planning Map 38A Zone – Whangamata, in the Thames-Coromandel Proposed District Plan (**Proposed Plan**). In terms of the case management of the appeals on the Proposed Plan, this appeal point falls within the Rezoning topic.

[2] The parties have reached an agreement that will resolve the appeal as it relates to the rezoning topic and the s 274 party interests of the following parties, insofar as they relate to the rezoning aspect of the appeal:

Whangamata Ratepayers Association Incorporated;
Keith Vernon; and
The NZ Transport Agency.

[3] In making this order the Court has read and considered the appeal and the memorandum of the parties dated 1 June 2018.

[4] The Court is making this order under s 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:

- (a) All parties to the proceedings have executed the memorandum requesting this order; and
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act, including in particular Part 2.

ORDER

[5] Therefore the Court orders, by consent, that the appeal is allowed to the extent that the Thames-Coromandel District Council is directed to add a new structure



plan titled "315 The Drive, Whangamata Structure Plan" to Section 27 Structure Plans of the Proposed Plan.

- [6] This Order resolves the aspect of the appeal coded to the Rezoning topic in its entirety. The other aspect of the appeal coded to the Biodiversity topic is addressed in other consent documents.
- [7] The s 274 interests of the Whangamata Ratepayers Association Incorporated and the Transport Agency in the appeal are resolved in their entirety. Mr Vernon's s 274 interests are resolved in part.
- [8] There is no order as to costs in relation to this order.

DATED at Auckland this 11th day of June 2018



A handwritten signature in black ink, appearing to read "D Kirkpatrick", is written over a horizontal line.

D A Kirkpatrick
Environment Judge

ANNEXURE A

27.XX 315 The Drive, Whangamata Structure Plan

27.X.X DESCRIPTION

The site at 315 The Drive, Whangamata covers approximately 4.9 hectares of land. The site is irregular in shape, with road frontage to both State Highway 25 and The Drive. It also adjoins two Council recreation reserves and existing housing development.

The land within the Structure Plan is zoned Residential. The Structure Plan area can accommodate a greater density of development (including comprehensive residential development such as apartments or terraced housing) across portions of the site than the current Residential Zone rules enable. The Structure Plan provides an indicative roading alignment.

27.X.X PURPOSE

The purpose of the 315 The Drive Structure Plan is to provide a comprehensive rule framework to guide and manage development within the Structure Plan area. The Structure Plan defines future development density, the types of residential land use expected, area of open space, the indicative roading network and connections with the wider roading network.

The Structure Plan provides for the layout and location of specific densities of residential development. The planned layout of development protects the amenity of surrounding properties and provides for an open space area.

27.X.X ISSUES

1. Unplanned residential development can adversely affect the:
 - a) Safety and efficiency of transport networks.
 - b) The amenity of existing residential activities, including open space and recreation opportunities.
 - c) Connectivity with adjoining residential development.

27.X.X OBJECTIVES AND POLICIES

Objective 1

Residential development is in general accordance with Diagram 1.

Policy 1a

Implementation of the structure plan, including comprehensive residential development, shall achieve:

- a) A range of residential densities;
 - b) Connectivity with adjoining residential development;
 - c) Appropriate recreation/open space opportunities;
 - d) Layout and design of development which is sympathetic to the topography of the site;
- Sites which are of adequate size and frontage to accommodate residential activity, off-street parking and landscaping;
- Maintenance of existing amenity values;



- g) Maintenance of the safety and efficiency of the road network.

27.X.X 315 THE DRIVE, WHANGAMATA STRUCTURE PLAN RULES

The structure plan rules are part of a hierarchy of rules. There may be overlay rules, district-wide rules or zone rules that also apply to the activity and the site. Where there is conflict between rules, the rule hierarchy applies to the extent of the conflict (see Section 1 Background and How to Use the Plan for more information). This means that the rules in this section take precedence.

ACTIVITY TABLE	
ACTIVITY	
Activities in the Residential Zone	R1
Comprehensive Residential Development	R2
One dwelling per lot	R3
Minor units	R3
Two or more dwellings per lot	R4
Subdivision creating one or more additional lots	R5

Rule 1 Activities in the Residential Zone

1. An activity in the Residential Zone that is a permitted or restricted discretionary activity in Section 54 Residential Zone or the district-wide rules and is not otherwise provided for in this structure plan retains its activity status.

Rule 2 Comprehensive residential development

1. A comprehensive residential development is a **restricted discretionary activity** provided:
 - a) It is:
 - i) in Area 2; and
 - ii) meets all the standards in Table 1 for Area 2; or
 - b) It is:
 - i) in Area 3;
 - ii) The site coverage in Area 3 is no more than 50%;
 - iii) The height is no more than 10m; and
 - iv) It meets all the other standards in Table 1 for Area 3.
2. The Council restricts its discretion to matters 2-8 and 10 in Table 2.
3. Comprehensive residential development that is not a restricted discretionary activity in Rule 2.1 is a **discretionary activity**.

Rule 3 One dwelling per lot Minor units

1. An activity listed in Rule 3 is a **permitted activity** provided:
 - a) It is in Area 1 or 3; and
 - b) It meets the standards in Table 1.

An activity listed in Rule 3 that is not a permitted activity under Rule 3.1 is a **restricted discretionary activity** except where standard b) in Table 1 is not met.

The Council restricts its discretion to matters 1 and 2 in Table 2.



4. An activity listed in Rule 3 that is not a permitted or restricted discretionary activity under rules 3.1 or 3.2 is a **discretionary activity**.

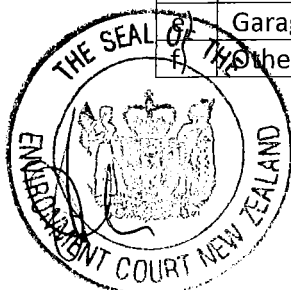
Rule 4 Two or more dwellings per lot

1. Two or more dwellings per lot (excluding a comprehensive residential development; see Rule 2) is a **restricted discretionary activity** provided each dwelling is within a minimum exclusive area (MEA) that meets the standards, as if each MEA were a lot, in Table 1, except where standard bb in Table 1 is not met.
2. The Council restricts its discretion to matters 1, 2, 6, 8, and 10 in Table 2.
3. Two or more dwellings per lot that are not a restricted discretionary activity under Rule 4.1 is a **discretionary activity**.

Rule 5 Subdivision creating one or more additional lots

1. Subdivision creating one or more additional lots is a **restricted discretionary activity** provided:
 - a) It is in general accordance with Diagram 1 including being in accordance with the indicative road layout;
 - b) A minimum area of 2,900m² is set aside for recreation purposes;
 - c) It meets the standards in Table 3 in Section 38;
 - d) It meets the standards in Table 1 subject to the following:
 - i) The yield for Area 2 is based on a land area of 8,190m²/250m². If the base area of Area 2 increases through legal survey, the yield may also increase in accordance with this calculation;
 - ii) The yield for Area 3 is based on a land area of 20,639m²/250m². If the base area of Area 3 increases through legal survey, the yield may also increase in accordance with this calculation.
2. The Council restricts its discretion to the matters in Table 2 and the matters in Table 5 in Section 38.
3. Subdivision creating one or more additional lots that is not a restricted discretionary activity under Rule 5.1 is a **discretionary activity**.

Table 1 – Development Standards				
Performance Standard		Area 1 – Residential	Area 2 – Extra Density (Apartments)	Area 3 – Extra Density
a)	Maximum number of residential lots	16	32	82
b)	Maximum number of dwellings prior to improvement of State Highway 25 intersection with Hilton Avenue.	83		
c)	Minimum net lot area	400m ² for front lots and 500m ² for rear lots		250m ² for front lots and 350m ² for rear lots
d)	Front yard	3m	3m	3m
	Garage door yard	5m	5m	5m
	Other yard	1.5m	3m	1.5m



g)	Other yard encroachment	One building per lot may encroach into one 'other yard' provided: a) A habitable room is not within the encroachment; and b) The building fits within a 2m and 45° height in relation to boundary; and c) The maximum building length parallel to the boundary is ≤ 6.6m.		
h)	Maximum building height	8m	10m	8m
i)	Height in relation to site boundary	3m & 45 degrees	3m & 45 degrees	3m & 45 degrees
j)	Maximum site coverage	35%	50%	45%
k)	Privacy buffer	-	-	8m
l)	Maximum fence height	2m	2m	2m
m)	Maximum solid fence height in a front yard, or a side yard within 10m from the front boundary that adjoins a public walkway or reserve	1.2m	1.2m	1.2m
n)	Minimum area and minimum width requirements for outdoor living	40m ² with a minimum width of 4m	- 1-2 habitable rooms = 20m ² and 4m - 3 habitable rooms = 30m ² and 4m - 4+ habitable rooms = 40m ² and 4m	- 1-2 habitable rooms = 20m ² and 4m - 3 habitable rooms = 30m ² and 4m - 4+ habitable rooms = 40m ² and 4m
o)	Minimum area and minimum width of one balcony when the dwelling has no ground floor.		- 1-2 habitable rooms = 6m ² and 2m - 3 habitable rooms = 8m ² and 2m - 4+ habitable rooms = 10m ² and 2m	- 1-2 habitable rooms = 6m ² and 2m - 3 habitable rooms = 8m ² and 2m - 4+ habitable rooms = 10m ² and 2m

NOTE

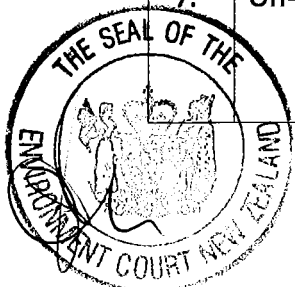
1. For the avoidance of doubt, the maximum level of development within the Structure Plan area prior to improvement of the State Highway 25 intersection/Hilton Avenue intersection is 83 dwellings (cumulative).

Table 2 – Restricted Discretionary Matters

Matter		Assessment Criteria	
	Effects of not meeting the standard(s)	a)	Whether any actions, taken to avoid, remedy or mitigate the effects of not meeting the standard(s) are effective.



2.	The suitability of the site for the scale of the activity proposed.	a)	Whether the site can accommodate all aspects of the activity while maintaining amenity values of the adjoining residential area.
3.	Positive and adverse effects	a)	The extent to which any adverse effects from the activity, such as bulk, glare or stormwater runoff do not affect adjacent sites.
4.	Utility infrastructure provision and location (including easements) for water, wastewater, solid waste, stormwater, electricity and telecommunications	a)	Whether the provision and location of infrastructure on-site is appropriate.
		b)	The extent to which the activity will not adversely affect capacity of reticulated networks.
		c)	Whether the activity should be connected to existing reticulation networks.
		d)	Whether easements are required.
		e)	Whether there is a technical and practical potential for co-location of infrastructure on site.
5.	Passive surveillance of publicly accessible areas	a)	The extent to which landscaping, urban design and on-site activities provide for passive surveillance of publicly accessible areas.
6.	Quality of outdoor spaces for comprehensive residential development	a)	Whether there is sufficient privacy within dwelling outdoor spaces.
		b)	The extent to which the dwelling outdoor space requirement in a comprehensive residential development can be functionally provided as a communal contiguous open space on-site.
		c)	Whether any communal outdoor space is centrally located and accessible by all dwellings.
		d)	Whether the communal outdoor space is landscaped for residents' use and enjoyment.
		e)	The extent to which a dwellings' open space and amenity does not rely on private outdoor spaces of neighbouring sites. For example, a balcony should not overhang an adjacent site's back yard to gain a better "quality" outlook. Instead it should look out over its own private space, a communal space within the site, a reserve or a road.
7.	Off-site effects from earthworks	a)	The extent to which changes in water drainage to and from adjacent sites because of the earthworks causing adverse effects, such as ponding, erosion, drainage or flooding are avoided or remedied.
		b)	Whether mitigation measures avoid earthwork debris being carried into



			adjacent properties, waterways and reserves, also taking into account cumulative effects.
8.	Extent of stormwater mitigation measures	a)	The extent to which stormwater generated by the development beyond the permitted baseline is mitigated through use of permeable ground surfaces, water retention or detention ponds or tanks, or other stormwater mitigation measures.
9.	Subdivision design	a)	The extent to which the subdivision layout and design is in accordance with Diagram 1.
10.	Transport network and connectivity	a)	Whether the subdivision or development is consistent with the indicative roading network.
		b)	The extent to which the development makes provision for transport networks and infrastructure services of an urban standard.
		c)	Whether pedestrian links are provided within the subdivision to connect with existing vehicle access and walkways.
		d)	The extent to which car parking, site access and manoeuvring space, including opportunities for shared car parking, are provided for.
		e)	Whether mitigation measures avoid adverse effects on the safety and efficiency of the road network, including the State Highway 25 and Hilton Drive intersection.

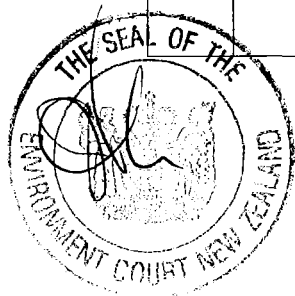
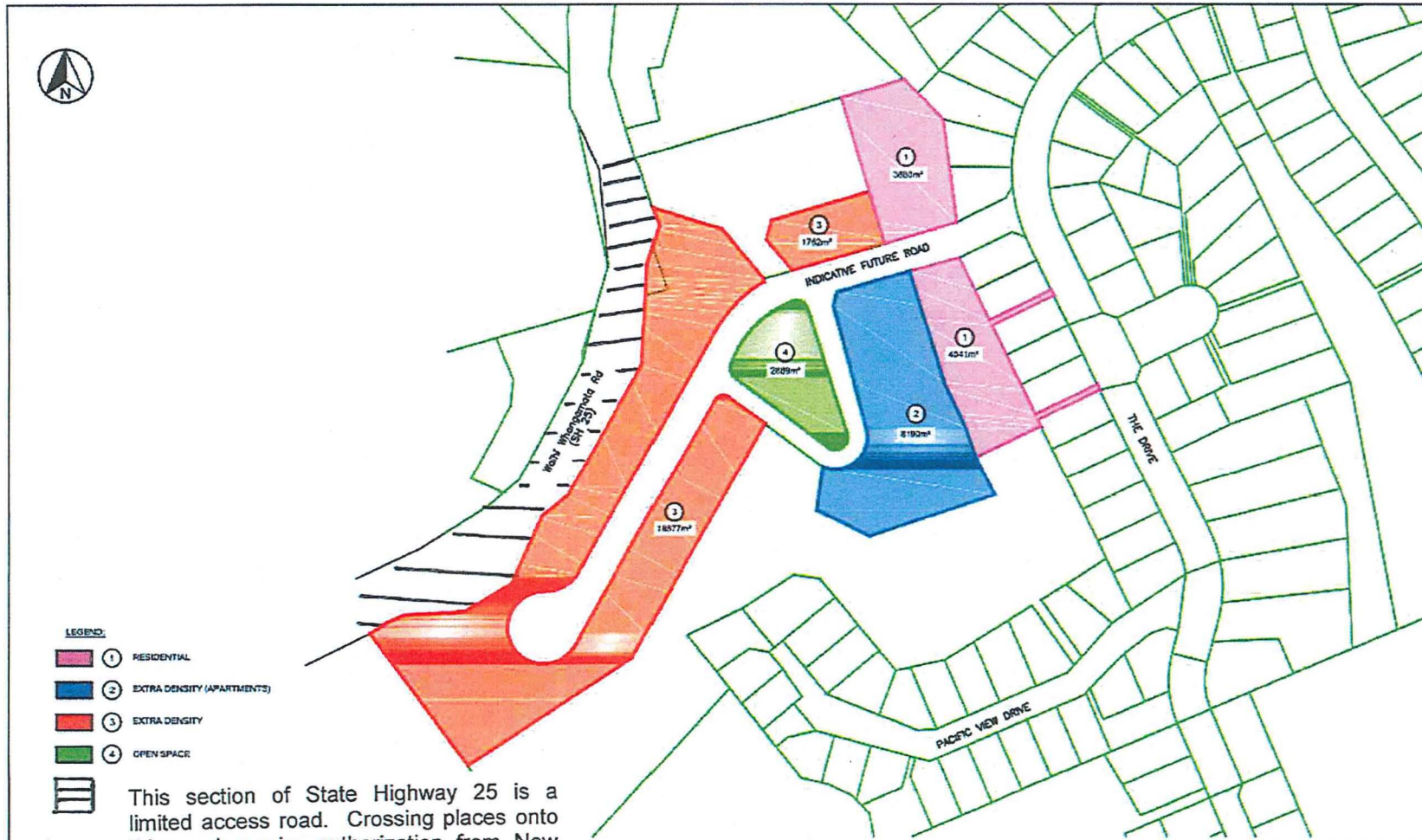


Diagram 1 – 315 The Drive, Whangamata Structure Plan



- LEGEND:**
- ① RESIDENTIAL
 - ② EXTRA DENSITY (APARTMENTS)
 - ③ EXTRA DENSITY
 - ④ OPEN SPACE

This section of State Highway 25 is a limited access road. Crossing places onto this road require authorization from New Zealand Transport Agency.

DRAFT AND SUBJECT TO SURVEY
 PLOTTED ON 2017-06-06 AT 5:35 p.m.

1	FOR INFORMATION	14/06/2017	LAGAN HOLDINGS
2	FOR INFORMATION	16/06/2017	315 THE DRIVE
3	FOR INFORMATION	16/06/2017	WHANGAMATA
STRUCTURE PLAN			
			1:1000 (S) A1 1:2000 (S) A3 C100 C

